

## UPDATE: FOREIGN INVESTMENT IN AGRICULTURAL LAND & WATER ENTITLEMENTS

The Register of Foreign Ownership of Agricultural Land (the **Agricultural Land Register**) was established in 2015 under the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* (the **Act**) as part of the wider package of reforms to Australia's foreign investment regime. It was designed to help provide greater transparency about the level of foreign ownership of Australia's agricultural land.

The Commissioner of Taxation reports annually to the Australian Treasurer on the operation of the Act and is required to publish aggregate statistics of foreign ownership each year. The Treasurer has recently released the second annual report on the Agricultural Land Register (**Report**), which includes information about registrations as at 30 June 2017. Key findings of the report are summarised in this briefing.

Since December 2016, the Act has included requirements on foreign persons to register interests in certain registrable and contractual water entitlements on a water rights register maintained by the Australian Taxation Office (**ATO**). The **30 November 2017** deadline for registration of those interests is fast approaching.

### BACKGROUND TO THE AGRICULTURAL LAND REGISTRATION REQUIREMENTS

Proposed investments in agricultural land by privately owned foreign persons generally requires approval where the cumulative value of a foreign person's agricultural land holdings exceeds A\$15 million, with exceptions applying to investors from certain of Australia's trade agreement partners. All acquisitions of agricultural land by foreign government investors require approval.

Additionally, all acquisitions of interests in agricultural land by foreign persons (regardless of whether they require approval and regardless of value) must be

#### Key issues – Agricultural Land

- All acquisitions of interests in agricultural land by foreign persons must be registered on the Agricultural Land Register maintained by the ATO.
- The Treasurer has released the second annual report on the Agricultural Land Register.
- The Report indicates that the proportion of agricultural land with a level of foreign ownership fell to 13.6% over the 12 months to 30 June 2017.
- The United Kingdom remains the largest foreign agricultural land holder, followed by China and the United States of America.

#### Key issues – Water Rights

- Foreign persons holding existing Water Rights have until 30 November 2017 to register those interests on the Water Register maintained by the ATO.
- From 1 December 2017 foreign persons will be required to register changes to holdings of Water Rights.

notified to the ATO which maintains the Agricultural Land Register (subject to some limited exceptions relating to taking of security interests).

Foreign persons are required to notify the ATO within 30 days if they:

- start or cease to hold agricultural land;
- become a foreign person or cease to be a foreign person while holding agricultural land; or
- hold land that becomes classified as or land which ceases to be classified as agricultural land.

Agricultural land is defined under the *Foreign Acquisitions and Takeovers Act 1972* (Cth) as land in Australia that *is used or that could reasonably be used, for a primary production business* (subject to certain exceptions). An interest in agricultural land includes a freehold interest or the right to occupy land under a lease (including a sublease or licence) where the term of the lease or licence (including any extension or renewal) is reasonably likely to exceed five years.

A more detailed overview of the registration requirements is contained in an earlier Clifford Chance briefing which is available at: [https://www.cliffordchance.com/briefings/2015/11/the\\_new\\_agriculturallandregisterwhatforeign.html](https://www.cliffordchance.com/briefings/2015/11/the_new_agriculturallandregisterwhatforeign.html)

## **KEY FINDINGS OF THE REPORT**

The Report indicates that in the period to 30 June 2017, there have been some significant changes in foreign ownership of agricultural land across states and territories (largely due to the acquisition and disposal of agricultural land by foreign investors, and existing agricultural land holders changing their status to or from a foreign person).

In particular, the controversial sale of S Kidman and Co to Australian Outback Beef has increased the level of Chinese ownership of agricultural land by 2.6 million hectares (0.7%), given Chinese investors hold a 33% interest in Australian Outback Beef.

That said, and despite foreign ownership of agricultural land remaining a sensitive political issue, the Report indicates in fact that foreign ownership of agricultural land has fallen overall across the last 12 months.

In particular:

- the proportion of agricultural land with a level of foreign ownership has fallen from 14.1% at 30 June 2016 to 13.6% as at 30 June 2017.
- the United Kingdom remains the largest foreign agricultural land holder (2.6% of agricultural land), followed by China (2.5% of agricultural land) and the United States of America (0.7%). The remaining top 10 source countries for foreign investment in agricultural land interests comprise (in descending order): The Netherlands, Canada, Switzerland, Singapore, The Philippines, Saudi Arabia and South Africa.
- key findings on a state and territory basis include:
  - an increase of 44.9% (3,968,000 ha) in Western Australian foreign held agricultural land, primarily due to new registrations of acquisitions of agricultural land that have settled since 1 July 2016.

- decreases in foreign held agricultural land by 33.0% (2,360,000 ha) in South Australia, 10.8% (1,910,000 ha) in Queensland and 9.8% (1,483,000 ha) in the Northern Territory.
- foreign interests in agricultural land in New South Wales/Australian Capital Territory, Victoria and Tasmania have remained steady.
- over 98% of foreign held agricultural land is held within Australian incorporated entities (owned upstream by foreign persons).
- around 80% of all foreign held agricultural land is held on a leasehold (as opposed to freehold) basis.
- over 85% (based on land area) of foreign held agricultural land is used for livestock purposes.

A full copy of the Report can be accessed at:

<http://firb.gov.au/about/publication/register-of-foreign-ownership-of-agricultural-land-report-of-registrations-as-at-30-june-2017/>.

## DEADLINE FOR REGISTRATION OF WATER RIGHTS

Changes to the law implemented at the end of December 2016 require that foreign persons are now required to register certain interests in registrable water entitlements and contractual water rights (**Water Rights**) on the Register of Foreign Ownership of Water Entitlements (**Water Register**) maintained by the ATO.

Foreign persons who hold or acquire Water Rights before 30 November 2017 will need to register those interests on the Water Register by 30 November 2017, or 30 days after they begin to hold that interest, whichever is later. Contractual rights will only need to be registered if the term of the contract, including any renewals or extensions at the end of 30 November 2017, will exceed 5 years.

Accordingly, existing holders of Water Rights need to consider taking stock of their existing interests (if they have not already done so) in order to meet the impending reporting deadline.

From 1 December 2017 foreign persons are required to register on the Water Register any acquisitions of and changes to holdings of Water Rights.

A more detailed overview of the requirements and types of Water Rights requiring registration is available in the Clifford Chance briefing accessible at: [https://www.cliffordchance.com/briefings/2017/01/legislation\\_passedforregister\\_offoreig.html](https://www.cliffordchance.com/briefings/2017/01/legislation_passedforregister_offoreig.html).

## FURTHER INFORMATION

If you have any inquiries regarding the topics covered in this briefing or Australia's inbound foreign investment regime more generally, please contact a member of the Clifford Chance Australia team.

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